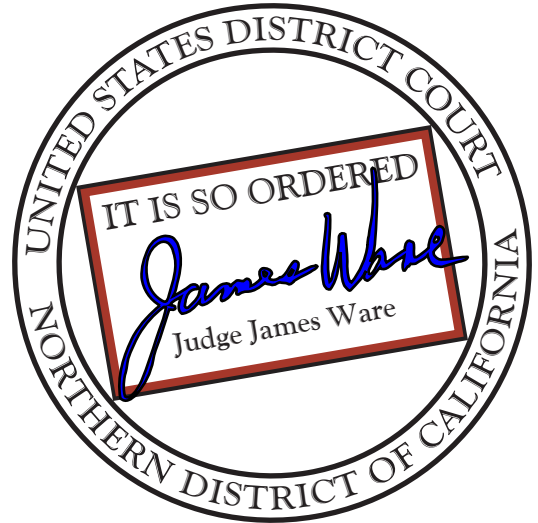


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8 Attorneys for Plaintiffs  
9 GYM-MARK, INC. and THE GYMBOREE CORPORATION

10 UNITED STATES DISTRICT COURT  
11 NORTHERN DISTRICT OF CALIFORNIA  
12 SAN JOSE DIVISION

13 GYM-MARK, INC. and THE GYMBOREE  
14 CORPORATION,

15 Plaintiffs,

16 v.

17 CHILDREN'S APPAREL NETWORK, LTD. and  
18 MERVYN'S LLC,

19 Defendants.

Case No.: C 07-03523 JW (HRL)

20 **STIPULATION AND [PROPOSED]**  
21 **ORDER FOR CONSENT INJUNCTION**

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26  
27  
28 Heller  
Ehrman LLP

1 This Stipulation and Order for Consent Injunction is made between Plaintiffs Gym-Mark,  
 2 Inc. (“Gym-Mark”) and The Gymboree Corporation (“Gymboree”) (collectively, “Plaintiffs”) and  
 3 Defendants Children’s Apparel Network (“CAN”) and Mervyn’s LLC (“Mervyn’s”) (collectively,  
 4 “Defendants”), by and through their counsel of record with reference to the following:

5 WHEREAS, on or about July 6, 2007 Plaintiffs filed the complaint in this action entitled  
 6 *Gym-Mark, Inc. and The Gymboree Corporation v. Mervyn’s LLC and Children’s Apparel*  
 7 *Network, Ltd.*, Case No. C 07-03523 (JW) (HRL), in which Plaintiffs alleged, *inter alia*, copyright  
 8 infringement under 17 U.S.C. § 101 *et seq.*, and unfair competition under Cal. Bus. & Prof. Code §  
 9 17200 *et seq.* (the “Action”) concerning certain clothing items manufactured, distributed, and  
 10 offered for sale by CAN to retailers and distributed to consumers by Mervyn’s, among other  
 11 retailers; and

12 WHEREAS, the Parties each now desire to resolve, compromise and settle the Action  
 13 without any admission of liability; and

14 WHEREAS, the Parties agree that a consent injunction relating to the manufacture,  
 15 distribution, offering for sale or sale by Defendants of the materials depicted in Exhibit 1 is a  
 16 necessary and material component of the settlement agreement;

17 NOW, THEREFORE, Plaintiffs and Defendants, by and through their counsel of record,  
 18 hereby agree and stipulate that this Consent Injunction shall be entered as a permanent injunction in  
 19 this action as follows:

20 1. Defendants CAN and Mervyn’s, and all of their agents, successors and assigns, and  
 21 all persons in active concert or participation with any of them are hereby enjoined from further  
 22 manufacturing, distribution, offering for sale or sale of the items depicted in Exhibit 1; and

23 2. CAN, in its sole discretion, shall elect either to (a) destroy any remaining inventory  
 24 of the Exhibit 1 Items in its possession, custody, and/or control, and within ten business days  
 25 thereafter supply Gymboree with an affidavit confirming such destruction, or to (b) donate all  
 26 remaining inventory of the items depicted in Exhibit 1 in CAN’s possession, custody, and/or  
 27 control (the “Donation”) to a charitable organization requiring as a condition of such Donation that  
 28

1 such organization distribute all such items without consideration and entirely outside of the United  
2 States and not to one of the countries specified in Exhibit 2 hereto ("Charitable Organization"). In  
3 the event that CAN elects option (b) in this Paragraph 2, CAN shall supply Gymboree the name or  
4 names of potential Charitable Organization(s), and Gymboree shall approve, which approval shall  
5 not be unreasonably withheld, one of such Charitable Organization(s) within five business days ,  
6 following which CAN shall complete the Donation and supply a confirming affidavit concerning  
7 the completion of the Donation and the Charitable Organization's agreement to be bound by the  
8 foregoing restrictions. The Donation shall not be made to an organization without Gymboree's  
9 approval. In the event CAN elects option (b) in this Paragraph 4, CAN shall have until June 30,  
10 2008 to complete the donation in accordance with this paragraph. Notwithstanding, CAN shall use  
11 diligent efforts to complete the donation as soon as is practicable following the execution of this  
12 Agreement; and

13 3. Defendants CAN and Mervyn's, and all of their agents, successors, assigns, and all  
14 persons in active concert or participation with any of them are hereby enjoined from any future  
15 infringement of Copyright Registration No. VAu682-370, including, but not limited to,  
16 manufacturing, distribution, offering to sell or selling the garments depicted in Exhibit 1; and

17 4. The Court shall retain jurisdiction over this action to entertain such further  
18 proceedings and to enter such further orders as may be necessary or appropriate to implement  
19 and/or enforce the provisions of this Consent Injunction.  
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1 STIPULATED AND AGREED.

2  
3 Dated: February 20, 2008

HELLER EHRMAN LLP

4  
5 By /s/ Annette L. Hurst  
ANNETTE L. HURST

6 Attorneys for Plaintiffs  
7 GYM-MARK, INC. and  
8 THE GYMBOREE CORPORATION

9  
10 Dated: February 20, 2008


DORSEY & WHITNEY LLP

11  
12 By /s/ Bruce R. Ewing  
BRUCE R. EWING

13 Attorneys for Defendants  
14 CHILDREN'S APPAREL NETWORK and MERVYN'S  
15 LLC

16 IT IS SO ORDERED. Pursuant to the Stipulation, the Clerk of Court shall close this file.

17  
18 Dated: March 3, 2008

19 By   
The Honorable James Ware  
United States District Court Judge

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27  
28 Heller  
Ehrman LLP

**ATTESTATION OF E-FILED SIGNATURE**

I hereby attest that I have on file all holograph signatures for any signatures indicated by a “conformed” signature (/s/) within this efiled document.

By /s/ Annette L. Hurst  
ANNETTE L. HURST

Attorneys for Plaintiffs  
GYM-MARK, INC. and THE GYMBOREE  
CORPORATION

## EXHIBIT 1A

SPRING 2007

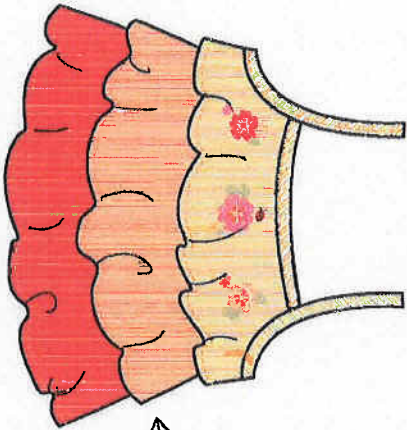
# CHILDREN'S APPAREL

N E T W O R K

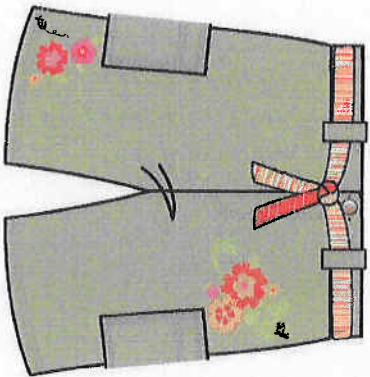
2-4T

2 PC BERMUDA SET

4C7530 2-5T



← Stripe Gauze



EMBROIDERY  
S178

SPRING 2007

# CHILDREN'S APPAREL

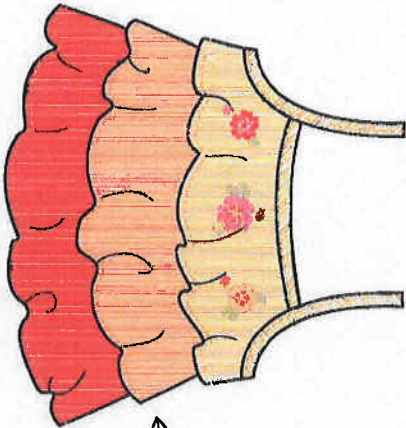
N E T W O R K

2 PC BERMUDA SET

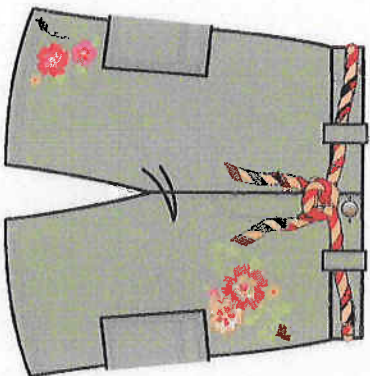
2-4T

4-6X

4C9521 4-6X



← STRIPE GAUZE



EMBROIDERY  
S178



SPRING 2007

## CHILDREN'S APPAREL

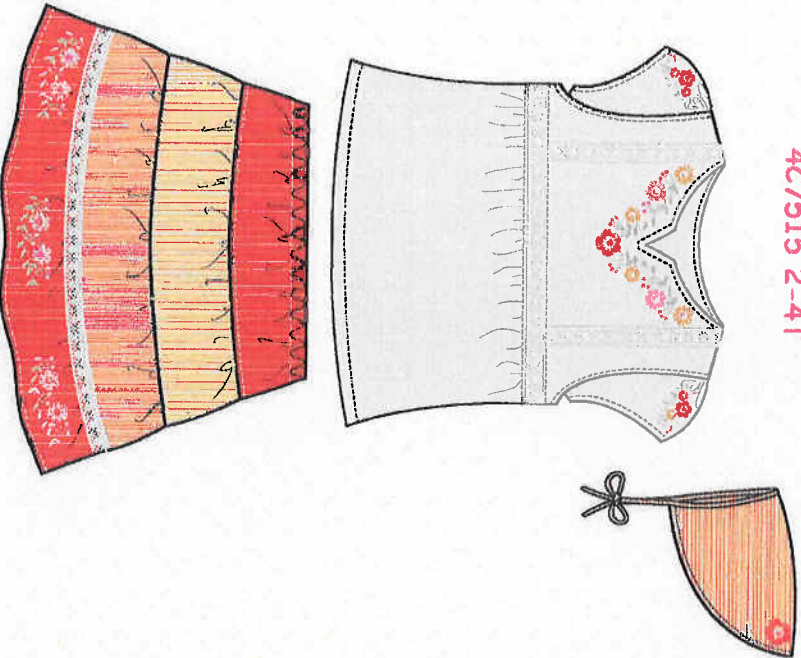
N E T W O R K

3 PC SKOOTER SETS

2-4T

4-6X

4C7515 2-4T



CRINKLED GAUZE FABRIC  
LACE TRIM W/ EMBROIDERY  
S059

## CHILDREN'S APPAREL

SPRING 2007

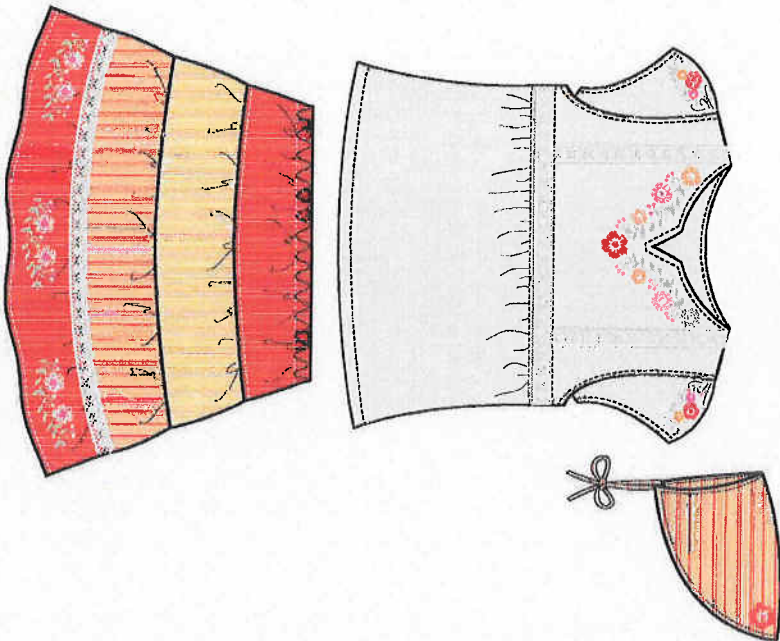
N E T W O R K

3 PC SKIRT SETS

2-4T

4-6X

4C7524 2-4T

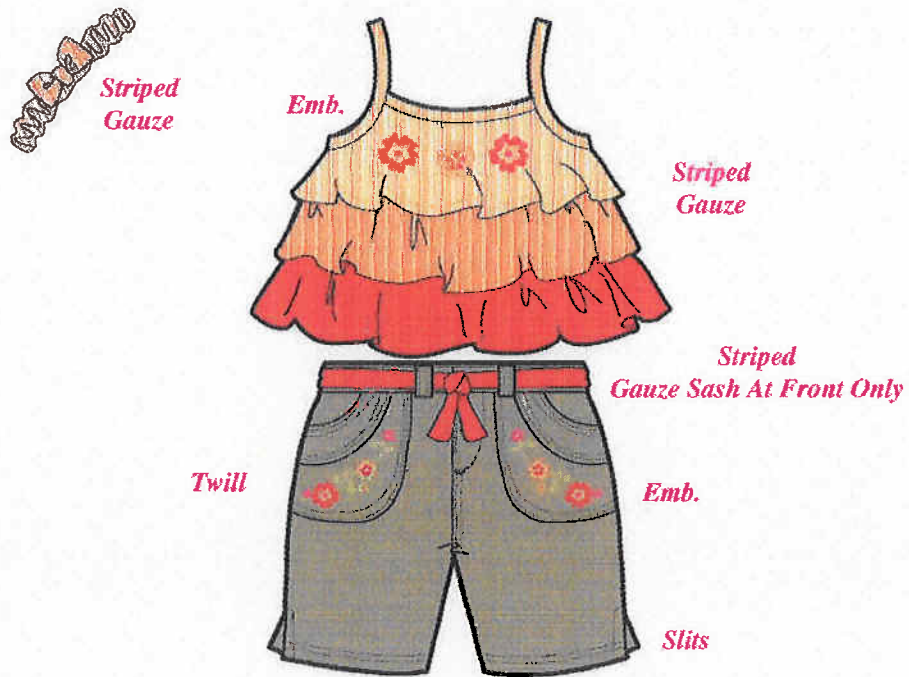


CRINKLED GAUZE FABRIC  
LACE TRIM W/ EMBROIDERY  
S059

## EXHIBIT 1B

*CHILDREN'S APPAREL*  
*INFANT NETWORK SPRING 2007*

*3PC. BERMUDA SHORT*



4c5126

P-7323





# CHILDREN'S APPAREL

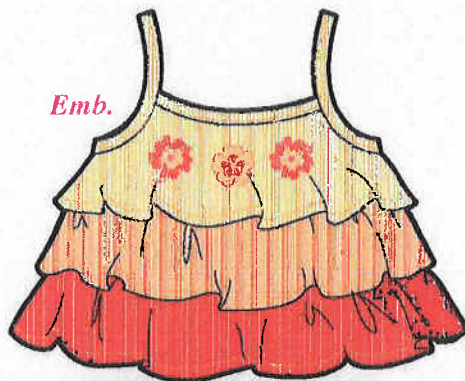
INFANT NETWORK SPRING 2007

## 3PC. BERMUDA SHORT



Striped  
Gauze

Emb.



Striped  
Gauze

Striped  
Gauze Sash At Front Only

Twill



Emb.

Slits

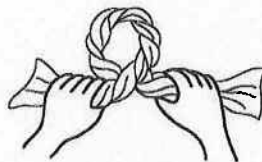
4c5129

P-7323

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2



3



4



# CHILDREN'S APPAREL

INFANT NETWORK SPRING 2007

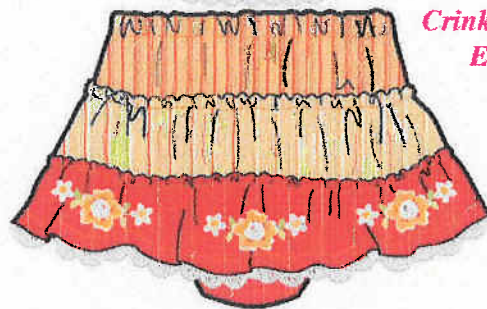
## 3PC. SKORT SET



*Crinkled Gauze*



*Crinkled Gauze Top  
Cluny Lace & Emb*

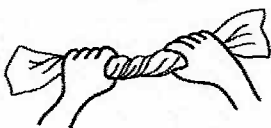


*Crinkled Gauze Skort with  
Emb. & Cluny Lace*

4c5482

P-7325

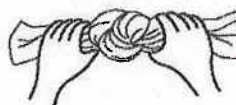
1



2



3



4



# CHILDREN'S APPAREL

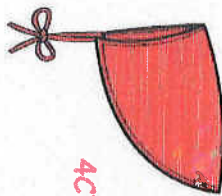
SPRING 2007

N E T W O R K

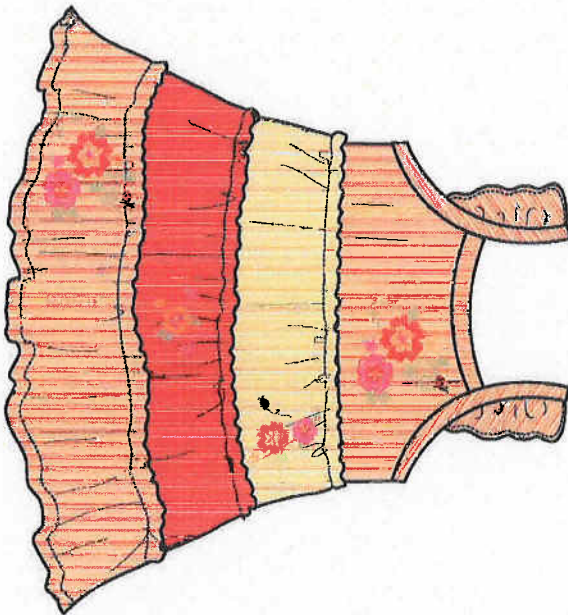
2 PC DRESS SETS

2-4T

4-6X



4C7444 2-4T



EMBROIDERY  
S231

## EXHIBIT 1C



# CHILDREN'S APPAREL

SPRING 2007

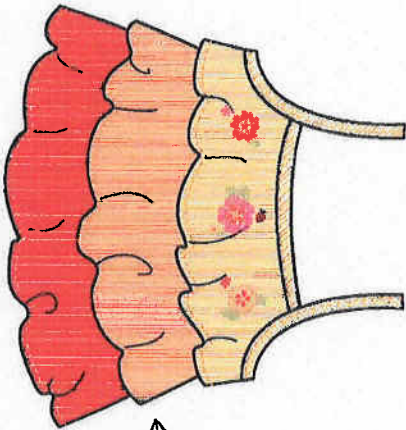
N E T W O R K

2 PC BERMUDA SET

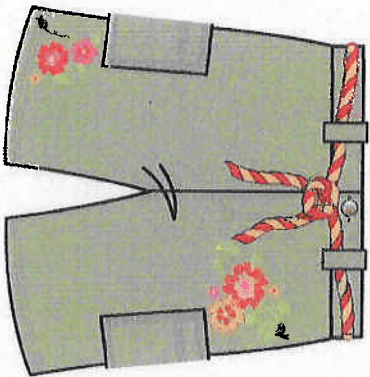
2-4T

4-6X

4C7521 2-4T



STRIPE GAUZE



EMBROIDERY  
S178

SPRING 2007

# CHILDREN'S APPAREL

NET WORK

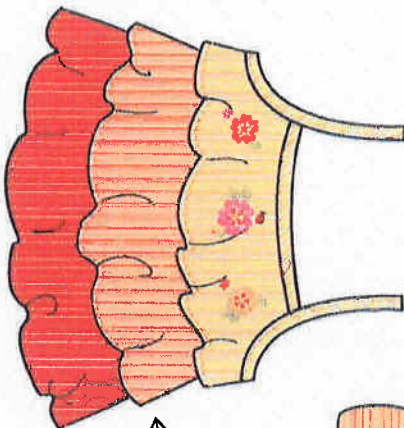
4-6X

3 PC BERMUDA SHORT SET

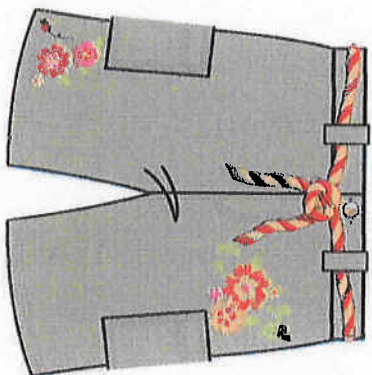
SEARS

4C9539 4-6X

HEADSCARF



↑ STRIPE GAUZE



EMBROIDERY

# CHILDREN'S APPAREL

SPRING 2007

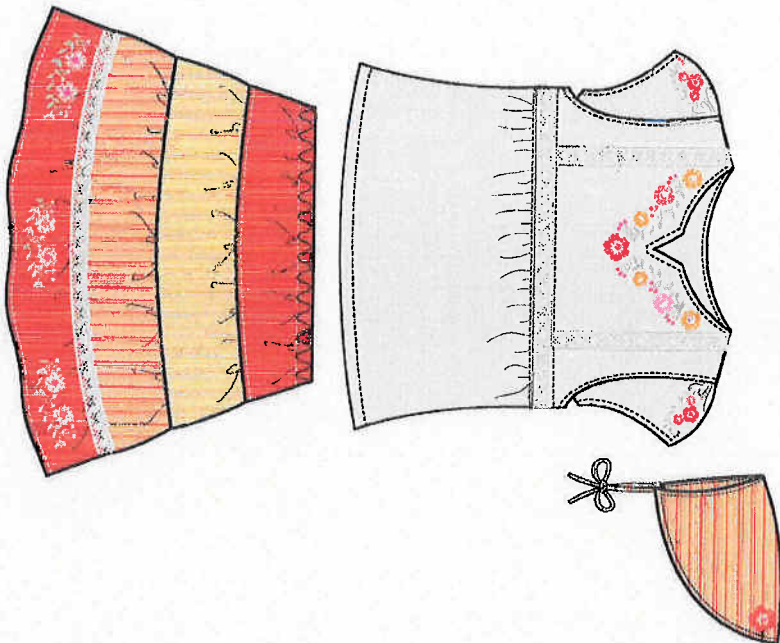
N E T W O R K

3 PC SKIRT SETS

2-4T

4-6X

4C9524 4-6X



CRINKLED GAUZE FABRIC  
LACE TRIM W/ EMBROIDERY  
5059

## EXHIBIT 1D

SPRING 2007

# CHILDREN'S APPAREL

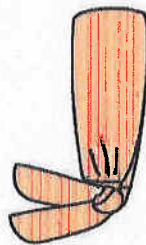
N E T W O R K

2-4T

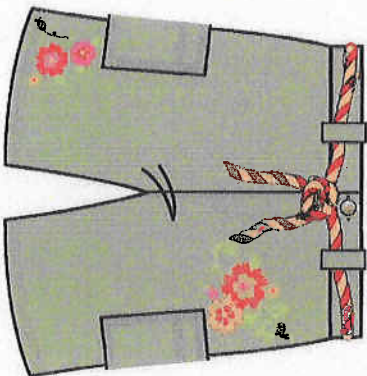
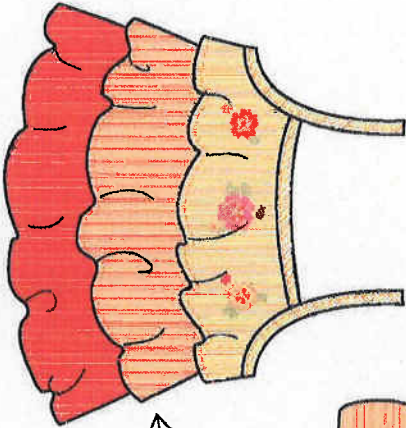
3 PC BERMUDA SHORT SET

4C7539 2-4T

HEADSCARF



→ STRIPE GAUZE



EMBROIDERY



SPRING 2007

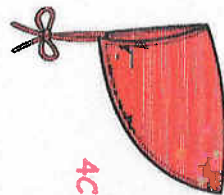
## CHILDREN'S APPAREL

N E T W O R K

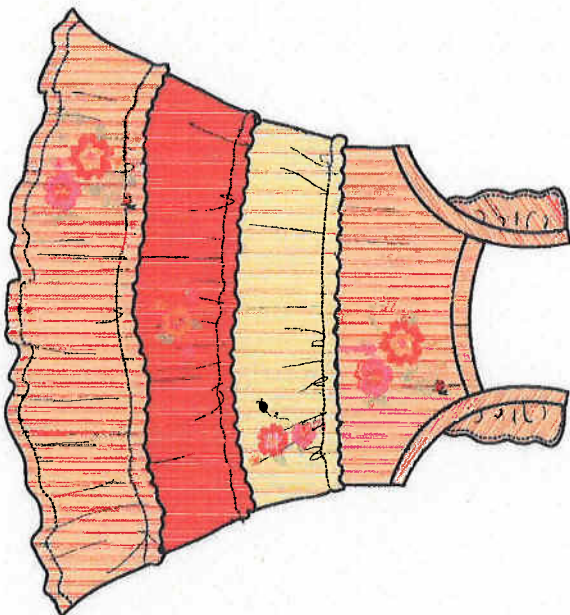
2-4T

4-6X

2 PC DRESS SETS



4C9444 4-6X



EMBROIDERY  
S231

SPRING 2007

# CHILDREN'S APPAREL

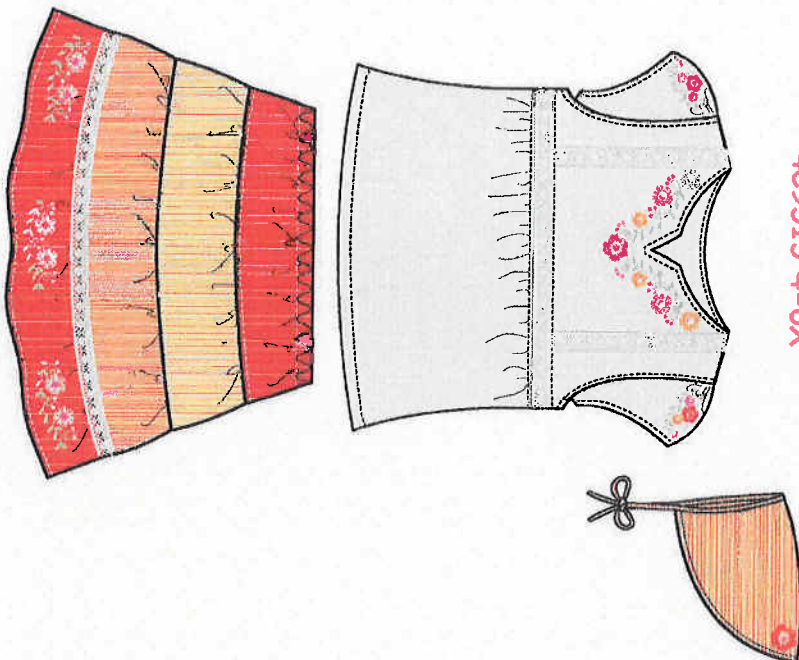
N E T W O R K

3 PC SKOOTER SETS

2-4T

4-6X

4C9515 4-6X



CRINKLED GAUZE FABRIC  
LACE TRIM W/ EMBROIDERY  
S059

## EXHIBIT 2



**EXHIBIT 2**

Argentina  
Australia  
Chile  
China  
Colombia  
Costa Rica  
Cyprus  
Dominican Republic  
Ecuador  
El Salvador  
France  
Greece  
Guatemala  
Honduras  
Hong Kong  
India  
Indonesia  
Ireland  
Japan

Macau  
Malaysia  
Mexico  
Nicaragua  
Peru  
Philippines  
Portugal  
Puerto Rico  
Republic of Panama  
Singapore  
South Korea  
South Africa  
Spain  
Switzerland  
Taiwan  
Thailand  
Turkey  
UK